

REMARKS

This responds to the Office Action mailed on December 22, 2006.

Claims 15, 51, 87, and 116 are amended, claims 1-4, 22-50, 58-86, 94-115, 120-131 are canceled; as a result, claims 15-21, 51-57, 87-93, 116-119 are now pending in this application.

§102 Rejection of the Claims

Claims 15-18, 21-22, 51-54, 57-58, 87-90, 93-94 and 116-119 were rejected under 35 U.S.C. § 102(e) for anticipation by Nishi (U.S. Publication No. 2002/0161691; hereinafter Nishi).

Applicants respectfully submit that claims 15-18, 21-22, 51-54, 57-58, 87-90, 93-94 and 116-119 should not be rejected under 35 U.S.C. § 102(e) for the reason that Nishi does not disclose each and every limitation of the claim 87 of the present application.

To anticipate a claim, the reference must teach every element of the claim.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Claim 87 includes the following limitation:

notifying automatically one or more bidders of the adjustment of the reserve price

The Office Action highlights the following quotes from Nishi:

[0071] ... Data submitted at the assessor equipment 16 is sent to and shown on the buyer equipment 20. Data is transmitted and processed in the same way between the organizer equipment 12 and the assessor equipment 16, and between the organizer equipment 12 and the buyer equipment 20.

Nishi, paragraph 71 (first quote)

[0097] FIG. 5 is an example of the screen on the organizer equipment 12, the assessor equipment 16 and the buyer equipment 20 in the "bidding period P1." The left side of FIG. 5 is the information field 36, including screen 34. The lower right part of the screen is the information field 38. The upper right part of the screen is input area 40. First, buyers can enter their bid on the input area 40. Second, the assessor equipment and the buyer equipment 20 show the status of the bidding. Then the "reserve price modification" is requested and the session status is shown on the assessor equipment.

Nishi, paragraph 97 (second quote)

[0101] FIG. 6 (2) shows the input area 40 on FIG. 5 of both of the organizer equipment 12 and the assessor equipment 16 during the "bidding status notification period P2" and the "trade judgment period P3." The chart 50 shows the relationship between the bidding prices and the number of bid entries. The assessor and sellers can click on the "reserve price modification button" or "Continue (cycle) button" on the input area 40 (refer to the chart 50).

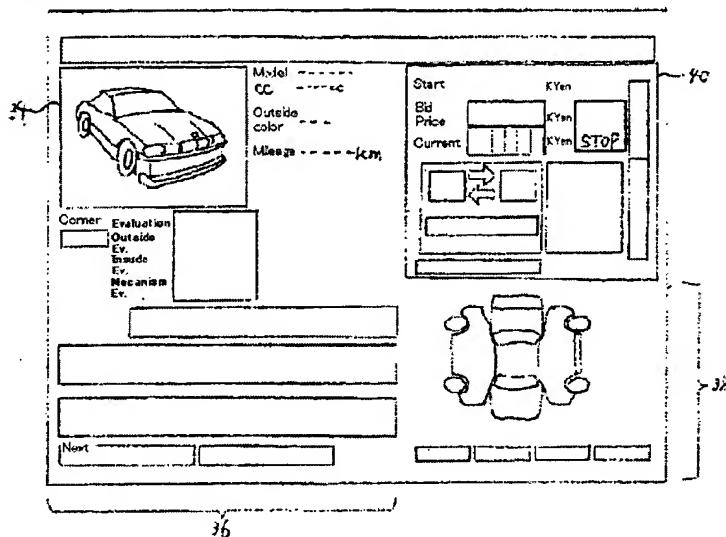
Nishi, paragraph 101 (third quote)

The above three quotes from Nishi describe assessor equipment, buyer equipment, and organizer equipment. The first quote states that data that is submitted at assessor equipment is sent to and shown on buyer equipment. The first quote does not describe the data that is submitted. The second quote describes an illustration of a screen that is common to the three mentioned types of equipment. The second quote further describes the assessor equipment and the buyer equipment showing a status of bidding and then states, "Then the reserve price modification is requested." The third quote describes an input area that appears only on the organizers equipment and the assessor equipment and an assessor and seller clicking on a "reserve price modification button."

Claim 87 requires an automatic notification of one or more bidders of an adjustment of a reserve price. In contrast, the first quote merely states that data that is submitted at assessor equipment is sent to and shown on buyer equipment without any further description of the data that is shown on the buyer equipment. Further, the second quote from Nishi describes a request of a reserve price modification but fails to describe an automatic notification of one or more bidders, as required by claim 87. Further, the third quote describes assessors and sellers that may click on a "reserve price modification button" and therefore also fails to describe the limitations of claim 87.

Nishi illustrates the following:

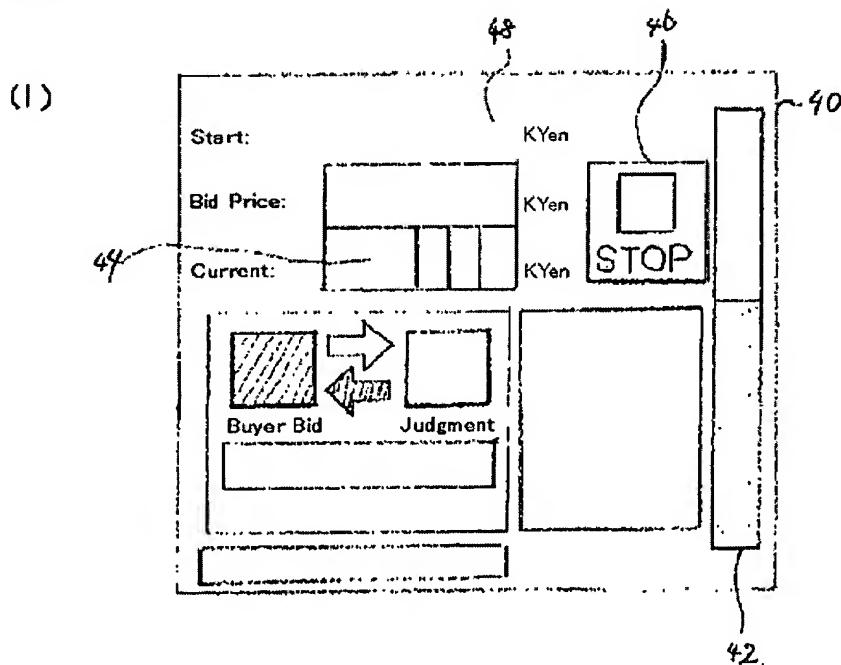
[Fig. 5]



The above Figure 5 illustrates the screen described by the second quote. Specifically, the above screen appears on the organizer equipment, the assessor equipment and the buyer equipment and includes an input area 40. The above illustrated screen does not include the described "reserve price modification button."

Nishi further illustrates the input area 40 for all three types of equipment as follows:

[Fig. 6]

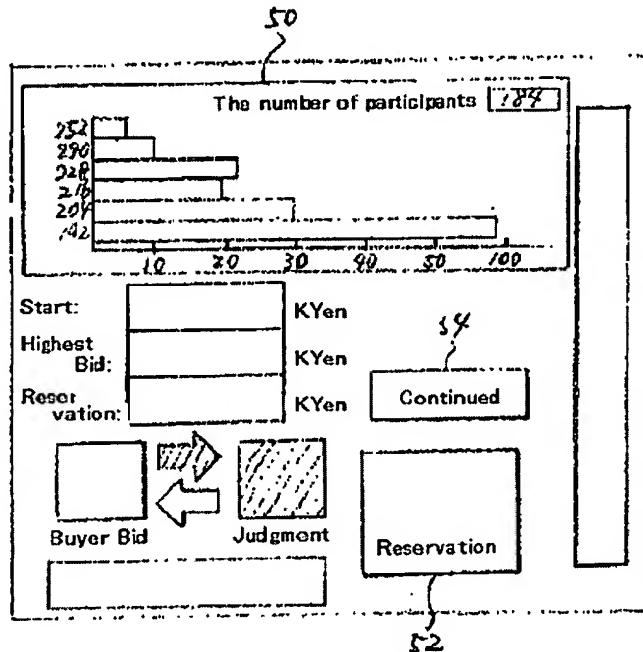


The above illustrated input area 40 does not include the described “reserve price modification” button.

Nishi further illustrates the input area 40 *on the organizer equipment and the assessor equipment* during the “bidding status notification period” as follows:

FIG. 6

(2)



The above illustrated input area 40 indeed includes the described “reserve price modification” button and an area identified “Reservation.” Nevertheless, the above illustrated input area 40 appears only *on the organizer equipment and the assessor equipment* during the “bidding status notification period.” Accordingly, Nishi cannot describe an automatic notification of one or more bidders of an adjustment of a reserve price, as required by claim 87, because Nishi fails to describe a buyer that receives such information, much less a screen that is viewed by a buyer that includes such information.

In summary, Nishi does not disclose each and every limitation of claim 87, as required to support a rejection of this claim under 35 U.S.C. § 102(e).

The above remarks are also applicable to a consideration of independent claims 15, 51, and 116.

As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 16-21, 52-57, 88-93, 117-119 under 35 U.S.C. § 102(e) is also addressed by the above remarks, and the amendments contained herein.

§103 Rejection of the Claims

Claims 19-20, 55-56, and 90-91 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishi in view of Herschkorn (U.S. 6,691,094; hereinafter Herschkorn). Claims 19-20 depend on independent claim 15. Claims 55-56 depend on independent claim 51. Claims 90-91 depend on independent claim 87. As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of the claims 19-20, 55-56, and 90-91 under 35 U.S.C. § 102(e) is also addressed by the above remarks, and the amendments contained herein.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4046 to facilitate prosecution of this application. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Reservation of Rights

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Office Action. Applicants' silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 10/750,052

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Title: METHOD AND SYSTEM TO ADJUST A SELLER FIXED PRICE OFFER

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Dkt: 2043.036US1

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 22 day of March 2007.

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